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09/695,216	10/25/2000	Gregory J. Lauckhart	20184/NNR11	2292
81905 7590 02/16/2012 Hanley, Flight & Zimmerman, LLC 150 S. Wacker Dr. Suite 2100 Chicago, IL 60606				
EXAMINER				
MACILWINEN, JOHN MOORE JAIN				
ART UNIT		PAPER NUMBER		
2442				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

09/695,216

Applicant(s)

LAUCKHART ET AL.

Examiner

JOHN MACILWINEN

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,2,4,6 and 70-85 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,2,4,6,70-85 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/15/2011 have been fully considered.
2. On page 7, Applicant argues that non-statutory signals cannot be considered tangible, and thus the "tangible machine readable medium" of claim 70 cannot be held as being directed to non-statutory subject matter (such as signals). Applicant's argument has been considered, however after weighing all the factors, including Applicant's Specification's lack of language limiting or otherwise discussing the scope of the claimed "machine readable medium", Applicant's arguments cannot be held as persuasive. Thus the rejection under 35 USC 101, as discussed below, is maintained.
3. Continuing on pages 8 through page 9, Applicant recites sections of their Specification in order to support the language of claims 75, 80 and 85. Applicant's arguments are persuasive, and thus the Written Description rejection is withdrawn.
4. Continuing on page 8 through page 9, Applicant argues that:

"Gupta does not teach or suggest a system to estimate a number of times that a first content object has been displayed to visitors of a webpage...because Gupta retrieves the number of times that an advertisement was displayed at a client directly from a log stored at that client."

Applicant's argument is not persuasive. In col. 17 lines 11 - 48 of Gupta discusses, a "sampling auditing scheme" is utilized to determine if estimates provided to an advertiser regarding advertisement display count information is "likely or not." Gupta does utilize data from log stored at a single client, however that data is utilized as part of Gupta's "sample auditing scheme"; data from *a single* client is utilized a part of system

of extrapolating the number of times an item was displayed to *all* clients/visitors across a system of "different sets of content-providers ... as well as different sets of proxies" (Gupta, col. 17 lines 30 – 35 and lines 43 - 46).

5. Applicant continues to address Gupta's teachings on pages 10 - 11, arguing that

"Thus, the sampling scheme described in Gupta retrieves the number of times an advertisement is displayed at a client. The sampling scheme described in Gupta has no need to estimate the number of times an advertisement is displayed to a client."

Applicant's arguments again are directed to data utilized by Gupta with regards to information displayed to a *single* client. The Examiner agrees that data gathered by the client executing the "sample auditing scheme" of Gupta is data regarding a single client. However, Gupta's teachings as a whole are more extensive than argued by Applicant. As discussed in col. 17 lines 30 – 46, Gupta is not directed to merely examining data on a single client. Gupta clearly states that the "sampling auditing scheme" is part of a method of examining data from "sets of content-providers ... [and] sets of proxies." The information from Gupta's single client, including advertisement hit-rates and rotation-rates, is utilized in order to "statistically examin[e] rates provided by sets of proxies and content-providers. Based on the data from Gupta's single client (analogous to Applicant's "prober" of claim 1), the above noted statistical examination of data from sets of content-provides and proxies is analyzed (i.e., "determined if likely or not", Gupta col. 17 lines 45 - 47) and display estimates provided by those proxies and content-provides are compared with the observed/probed data gathered by the client/prober. As Gupta notes in col. 17 lines 46 – 58, the sample auditing scheme

derives the number of times content is displayed (which Gupta compares with claimed display counts provided by the proxies and content-providers).

Thus, Applicant is correct in that Gupta has "no need to estimate the number of times an advertisement is displayed to a client"; however, as explained above, Gupta is not merely concerted with that data displayed to a client, but rather utilizes data displayed to a client as a way of estimated data displayed by *sets* of providers to all requesting clients over a larger period of time - thus the description of Gupta's method as a "sampling" scheme – a sample of data is utilized to determine if a larger set of data is likely correct or not (col. 17 lines 45 - 46).

6. Applicant's remaining arguments rely on the reasoning addressed above, and thus are unpersuasive for the reasons given above.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 70 - 85 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. Regarding claim 70, said claim is directed to a "tangible machine readable medium". The broadest reasonable interpretation of a claim drawn to such a medium includes transitory propagating signals per se in view of the ordinary and customary meaning of said computer readable media. Claim 70 may be amended to narrow the

claim to cover only statutory embodiments by adding the limitation "non-transitory" to the claim, or by directing to a machine readable "storage device", or by specifying that the claimed medium "does not include a signal."

9. Regarding claims 71 – 75, said claims further specify the machine readable medium of claim 70, while adding no limitations requiring statutory subject matter. Thus the logic applied above to claim 70 is applied similarly to claims 71 – 75.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 2, 6, 70, 71, 72, 74, 76, 77, 79, 81, 82 and 84 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta (US 6,487,538 B1).

12. Regarding claim 1, Gupta shows a system for estimating a number of times digital content has been displayed (*executing a sampling auditing scheme to statistically examine display claims by proxies and content providers, col. 17 lines 30 -55*) via a network, the system comprising:

an estimating device to determine an estimate of a number of times that a webpage has been accessed (*e.g., a proxy, col. 17 lines 12 – 24, col. 17 lines 44 - 46*);

a prober to repeatedly request the web page, and in response, receive content files (*a client executing "sampling auditing scheme" utilizing a set of page views, col. 17 lines 39 - 46*)

a statistical summarization system including a processor to determine a number of times that a first content object is included (*an "advertisement hit rate", col. 17 lines 45 - 46*) in the content files received in response to the requests, determine a total number of times that the webpage has been requested and estimate (*determine if the "rates are likely or not"*) the number of times the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests (*an "advertisement hit rate", col. 17 lines 45 - 46 observed in the sampling period*), (2) the total number of times that the web page was requested (*the sampling performed over a set "of page views", col. 17 lines 40 -45*) and (3) the estimate of the number of times that the webpage has been accessed (*data provided from the "log of proxy 402", i.e., the "proxies claims" regarding accesses, col. 17 lines 14-45,61-63 whose probability of correctness is evaluated utilizing the "sampling auditing scheme" of col. 17 lines 30 - 55*).

13. Regarding claim 2, Gupta shows wherein the estimating device is to receive the estimate of the number of times that the webpage has been accessed from at least one proxy cache server (*col. 6 lines 35 - 61, col. 7 lines 40 - 43*).

14. Regarding claim 6, Gupta shows a method of estimating a number of times digital content has been displayed (*executing a sampling auditing scheme to statistically*

examine display claims by proxies and content providers, col. 17 lines 30 -55) via a network, the comprising:

repeatedly requesting a web page, and in response, receive content files (*a client executing "sampling auditing scheme" utilizing a set of page views, col. 17 lines 39 - 46)*

determining a number of times the first content object is included in the content files received in response to the requests (*"advertisement hit-rate", col. 17 lines 43 – 44*);

estimating, with a processor, the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests (*an "advertisement hit rate", col. 17 lines 45 – 46 observed in the sampling period*), (2) a total number of times that the web page was requested (*the sampling performed over a set "of page views", col. 17 lines 40 -45*) and (3) the estimate of the number of times that the webpage has been accessed (*data provided from the "log of proxy 402", i.e., the "proxies claims" regarding accesses, col. 17 lines 14-45,61-63 whose probability of correctness is evaluated utilizing the "sampling auditing scheme" of col. 17 lines 30 - 55*).

15. Regarding claim 70, Gupta shows a tangible machine readable medium storing instructions, that when executed, cause a machine to at least:

repeatedly request a web page (*a client executing "sampling auditing scheme" utilizing a set of page views, col. 17 lines 39 - 46)*

determine a number of times the first content object is included in content files

received in response to the requests (*"advertisement hit-rate", col. 17 lines 43 – 44*);

estimate the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests (*an "advertisement hit rate", col. 17 lines 45 – 46 observed in the sampling period*), (2) a total number of times that the web page was requested (*the sampling performed over a set "of page views", col. 17 lines 40 -45*) and (3) the estimate of the number of times that the webpage has been accessed (*data provided from the "log of proxy 402", i.e., the "proxies claims" regarding accesses, col. 17 lines 14-45,61-63 whose probability of correctness is evaluated utilizing the "sampling auditing scheme" of col. 17 lines 30 - 55*).

16. Regarding claim 71, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).

17. Regarding claim 72, Gupta shows wherein the instructions stored on the machine readable medium are to be executed by an advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).

18. Regarding claim 74, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).

19. Regarding claim 76, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).

- 20.** Regarding claim 77, Gupta shows wherein the system is comprise advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).
- 21.** Regarding claim 79, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).
- 22.** Regarding claim 81, Gupta shows wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy (*col. 17 lines 13 - 19*).
- 23.** Regarding claim 82, Gupta shows wherein the method is performed by an advertising prevalence system (*Figs. 1, 3, col. 17 lines 13 - 15*).
- 24.** Regarding claim 84, Gupta shows wherein the content object is an advertisement (*col. 17 lines 13 - 14*).

Claim Rejections - 35 USC § 103

- 25.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 26.** Claims 4, 73, 78 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Chen (US 2003/0163370 A1).
- 27.** Regarding claim 4, Gupta shows: claim 1.

Gupta does not show: an extractor to locate a fragment of the web page that includes the first content object; and

a classifier to perform a structural analysis of the fragment to classify the digital content.

Chen shows: an extractor to locate a fragment of the web page that includes the first content object ([64,78-80]); and

a classifier to perform a structural analysis of the fragment to classify the digital content ([64,78-80]).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

28. Regarding claim 73, Gupta shows claim 70.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (*Fig. 4*, [37,42,45,51-53]).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (*Chen*, [7-10, 16]).

29. Regarding claim 78, Gupta shows claim 70.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (Fig. 4, [37,42,45,51-53]).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (Chen , [7-10, 16]).

30. Regarding claim 83, Gupta shows claim 6.

Gupta does not show: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

Chen shows: wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer (Fig. 4, [37,42,45,51-53]).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the sampling techniques of Chen in order to more accurately analyze and audit observed, sampled content (Chen ,

[7-10, 16]).

31. Claims 75, 80 and 85 rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Alberts (5,937,392).

32. Regarding claim 75, Gupta shows claim 70, including repeatedly requesting a webpage (col. 17 lines 40-46) and determining a rotation rate for the content object (*"repeat rate"*; col. 17 lines 39 - 46), and

determining a number of times that the first content object has been displayed to visitors (*"hit-count information"* col. 17 lines 30 - 46).

Gupta does not show where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files in response to requests;

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files in response to requests (col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36);

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36).

It would have been obvious to one of ordinary skill in the art at the time of the

invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-known mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

33. Regarding claim 80, Gupta shows claim 1, repeatedly requesting a webpage (col. 17 lines 40-46) and determining a rotation rate for the content object (*"repeat rate"; col. 17 lines 39 - 46*), and

determining a number of times that the first content object has been displayed to visitors (*"hit-count information" col. 17 lines 30 - 46*).

Gupta does not show where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files received in response to requests;

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files received in response to requests (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*);

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3*

lines 44 – 46, col. 3 line 65 – col. 4 line 36).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-known mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

34. Regarding claim 85, Gupta shows claim 6, including repeatedly requesting a webpage (col. 17 lines 40-46) and determining a rotation rate for the content object (*"repeat rate"; col. 17 lines 39 - 46*), and

determining a number of times that the first content object has been display to visits (*"hit-count information" col. 17 lines 30 - 46*).

Gupta does not show where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files received in response to requests;

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

Alberts shows where the above data can be ascertained utilizing: dividing the total number of times that the webpage was requested by the number of times that the first content object was included in the content files received in response to requests (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*);

multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (*col. 1 lines 29 - 31, col. 1 line 67 – col. 2 line 4, col. 3 lines 44 – 46, col. 3 line 65 – col. 4 line 36*).

It would have been obvious to one of ordinary skill in the art at the time of the invention of modify the online analysis system of Gupta with the mathematical relationships illustrated in the online analysis system of Alberts in order to derive necessary data utilizing well-known mathematical operations and relationships as well as without intensive computational overhead (*Alberts, col. 1 line 65 – col. 2 line 4*).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. MacIlwain whose telephone number is (571)

272-9686. The examiner can normally be reached on M-F 7:30AM - 5:00PM EST; off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess, can be reached on (571) 272 - 3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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